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| 10/535,098 | 12/16/2005 | Jari Peltonen | 0969-0216PUS1 | 3579 |

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| EXAMINER |
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WILLIAMS, MONICA L

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| ART UNIT | PAPER NUMBER |
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3644

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06/30/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

| | | | |
|------------------------------|---------------------------------------|--|--|
| Office Action Summary | Application No. 10/535,098 | Applicant(s) PELTONEN ET AL. | |
| | Examiner MONICA L. WILLIAMS | Art Unit 3644 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
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| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3, 5-6, and 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haslam et al (4,192,095) in view of Ahlnas et al (5,482,529) and Hakala et al (WO 02/063941 A1).

3. In re claims 1 and 9-11, with reference to col.1 line 45 to col.2 line 5, Haslam et al disclose a coated plant seed which is coated with a water and oil coating composition in the form of an emulsion or an emulsion suspension, in which the coating composition comprises a mixture of a plant nutrient containing a phosphate salt and a fixing agent (water and oil). With reference to col.2 line 64 to col.3 line 34, Haslam et al disclose the claimed invention as described above, and that seeds to be coated are subjected in an equipment suitable for seed treatment (mixing and recirculating tank with a mechanical agitator), and a water and oil coating composition in the form of an emulsion or an emulsion suspension, in which the coating composition comprises a mixture of a plant nutrient containing a phosphate salt and a fixing agent (water and oil) is added to form a coating on the seed surface. Not disclosed is 40-70% by weight of the plant nutrient and a pH between 5 and 7.

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4. With reference to col.3 lines 5-8, Ahlnas discloses a fertilizer composition comprising a plant nutrient containing a phosphate salt and a fixing agent wherein the composition comprises 40-70% by weight of the plant nutrient. The advantage of this is to provide a significant amount of nutrients to the plant. Thus it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the coating composition of Haslam to have 40-70% plant nutrients as taught by Ahlnas in order to provide a significant amount of nutrients to the plant.

5. With reference to the bottom of page 7, Hakala et al discloses a composition for coating seeds in which the pH value is typically 5.5 and in a range from 5 to 6. The advantage of this is to keep the seed at a more neutral pH value and prevent the seed from being harmed from too much acidity. Thus it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the coating composition of Haslam to have a pH value in the range of 5 to 7 as taught by Hakala et al in order to keep the seed at a more neutral pH value and prevent the seed from being harmed from too much acidity.

6. In re claims 2, 3, and 5, with reference to col.1 line 45 to col.2 line 5, Haslam et al disclose a coating composition containing ammonium phosphate, oil, water, and sugar. Not disclosed are the surface-active agent and the pH regulating agent and the specific percentages of each ingredient in the composition.

7. However, with reference to col.3 lines 5-44 and the abstract, Ahlnas et al disclose a composition containing 60-80% by weight of a phosphorus compound, 2-20% by weight of oil, 1-25% by weight of W/O surface-active agent (which could also be

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substituted by molasses as suggested in the applicant's disclosure in paragraph 2 page 8, and would then also qualify as a sugar), 5-50% by weight of water, 0.1-10% by weight of a pH regulating agent. The advantage of adding acid is to improve the phosphorus assimilation of plants. Thus it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the composition of Haslam et al to contain a surface-active agent and a pH regulating agent and the specific percentages of each ingredient in the composition as taught by Ahlnas et al in order to improve the phosphorus assimilation of plants.

8. In re claim 6, Haslam et al as modified by Ahlnas et al and Hakala disclose the claimed invention except for a viscosity not more than 10,000mPas, preferably not more than 3,000mPas. Given the claimed composition, the claimed viscosity range would inherently be reached. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have had a viscosity not more than 10,000 mPas, preferably not more than 3,000 mPas, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

9. Claims 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haslam et al (4,192,095) in view of Ahlnas et al (5,482,529) and Hakala et al (WO 02/063941 A1) as applied to claims 1-3, 5-6, and 9-10 above, and further in view of Dannelly (4,245,432).

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10. In re claims 7 and 8, Haslam et al, Ahlnas et al, and Hakala et al disclose the claimed invention except for the coated seed containing 0.5-25%, and more specifically, 1-15% by weight of the coating composition relative to the weight of the seed.

11. However, with reference to col.3 lines 52-56, Dannelly discloses that coating is normally applied to a seed such as to result in a coating weight of from about 0.25 to about 5% based on the weight of the seed. The advantage of this is to have a coating that is not too thick for the plant to grow. Thus it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the coating composition of Haslam et al, Ahlnas et al, and Hakala et al to have a coating weight of from about 0.25 to about 5% based on the weight of the seed as taught by Dannelly in order to have a coating that is not too thick for the plant to grow.

Response to Arguments

12. Applicant's arguments filed 03/05/2008 have been fully considered but they are not persuasive.

13. In response to applicant's argument that Haslam is directed to solving a different problem and is therefore unrelated, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

14. In response to applicant's argument that Ahlnas does not disclose applied the fertilizer composition directly to seeds, Haslam does disclose applying a fertilizer

composition to plant seeds and the Ahlnas reference is used to modify the composition of the fertilizer composition used by Haslam.

Conclusion

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MONICA L. WILLIAMS whose telephone number is (571)270-3113. The examiner can normally be reached on Mon to Fri 6:00-3:30, Alternate Friday off, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mansen can be reached on 571-272-6608. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael R Mansen/
Supervisory Patent Examiner, Art
Unit 3644

MW 06/17/2008